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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,166	02/07/2001	Joseph John Melotik	200-0729	1742

10534 7590 04/27/2004

BLISS MCGLYNN, P.C.
2075 WEST BIG BEAVER ROAD
SUITE 600
TROY, MI 48084

EXAMINER

GUTMAN, HILARY L

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/681,166

Applicant(s)

MELOTIK ET AL.

Examiner

Hilary Gutman

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: the arguments are not persuasive (see attached).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-3,5,7-10,12,14,16,18,21 and 120.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

Response to Arguments

Applicant's arguments filed 3/11/04 have been fully considered but they are not persuasive.

The applicant states that Greig does not disclose a decklid to close an upper portion of the open end of the rear storage area in a closed position and a load floor including a rear panel that closes a lower portion of the rear storage area when in the upright closed position, wherein the decklid and the rear panel cooperate together to close the open end of the rear storage area.

The examiner disagrees and believes that Greig does in fact disclose a decklid 13 to close both an upper portion as well as a lower portion of the open end 12 of the rear storage area 11 in a closed position (not shown). Greig also discloses a load floor 23 including a rear panel 26 that closes a lower portion of the rear storage area (Figure 2) when in the upright closed position. The decklid and the rear panel cooperate together, that is the components work together and operate in a manner, to close the open end of the rear storage area.

The applicant further argues that the load floor 26 does not close a lower portion of the rear deck space because it is disposed forward of the opening and within the rear deck space.

The examiner disagrees and believes that because the load floor does indeed close a lower portion of the rear deck space as is clearly evident from Figure 2.

The applicant states that the decklid 13 does not cooperate with the load floor 26 to close the opening. The examiner disagrees and believes that when the load floor is in the upright, closed position the decklid can cooperate with the load floor to close the opening.

The applicant further states that the word "cooperate" means "to act together" and that the decklid closes the opening of Greig and cannot act together with the load floor 26. The

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examiner disagrees and believes that the load floor must cooperate with the decklid so as to be placed in the closed position (Figure 2) and allow the opening to be closed. If the two components did not cooperate or act together, then the opening would be unable to be closed.

As to claim 21, the applicant states that Greig lacks an endgate closing a lower portion of the opening when in the closed upright position and a decklid cooperating with the endgate to close an upper portion of the opening of the cargo area in a closed position. The examiner disagrees and notes that an endgate 26 is clearly shown closing a lower portion of the opening (Figure 2) and a decklid 13 cooperates or acts together with the endgate to close an upper portion of the opening.

Regarding the 103 rejection and in response to applicant's arguments against the references individually, the examiner would like to note that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is desirable to combine the Mayer and Greig references to better secure the load

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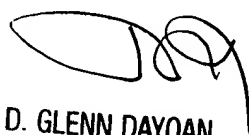
floor to the vehicle. Furthermore, it is additionally desirable to combine Mayer and Klar in order to quickly and more easily open and close one single decklid.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


D. GLENN DAYOAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600
4/24/09